

***R v Castel* [2020] QCA 91 (6 May 2020) – Queensland Court of Appeal**

‘Application for leave to appeal against sentence’ – ‘Female perpetrator’ – ‘Manifestly excessive’ – ‘Mitigating factors’ – ‘Physical violence and harm’ – ‘Remorse’ – ‘Weapon’

Offences: Manslaughter (domestic violence offence)

Proceedings: Application for leave to appeal against sentence

Issue: Whether the sentence was manifestly excessive.

Facts: The woman applicant and her husband and victim had been married since 2010. Throughout this time, they argued occasionally, particularly about the husband arriving home from work after 6pm. On the day of the offending, the husband arrived home after 8pm and an argument developed while the couple were in the kitchen. The applicant threw the husband’s laptop at him, then picked up a 20.5cm long kitchen knife and threw it at him from 2-3m away. It landed in his chest region and either he pulled it out or it fell out. The applicant immediately said she was sorry, used a towel to cover the wound and called 000. Despite medical intervention, the husband died. The applicant was sentenced to nine years’ imprisonment, with no fixed date for parole eligibility. She appealed against her sentence.

Judgment: The majority (Sofronoff P and Mullins JA) held that the head sentence of nine years’ imprisonment was not inappropriate, but that failing to fix an eligibility date for parole was "unreasonable or plainly unjust" and was manifestly excessive [38]. They emphasised that the applicant had no criminal history, showed immediate remorse for her conduct, entered an early plea of guilty and was not at high risk of reoffending, and therefore ordered that her sentence be mitigated by including a date for eligibility for parole that was one-third of the sentence in custody [38].

Mullins JA (with whom Sofronoff P agreed) further provided that "section 9(10A) of the [Penalties and Sentences Act 1992 (Qld)] is a legislatively prescribed aggravating factor that must be taken into account in arriving at the appropriate sentence for the offence of manslaughter that is a domestic violence offence, unless the exception within the provision due to the exceptional circumstances of the case applies" [35]. Section 9(10A) refers to offenders convicted of domestic violence offences. In such cases, the fact that the offence is a domestic violence offence is an aggravating factor that is added to the other aggravating factors and balanced with any mitigating factors [35].

Boddice J (dissenting) dismissed the appeal, holding that the applicant's offending was "an extraordinary act of violence" and was a "very dangerous action" [42] that occurred in circumstances where the applicant was sober, sane, not provoked and not acting in self-defence [43]. He considered the applicant's offending to be a very serious example of a domestic violence offence, making the circumstance of aggravation a very relevant factor in sentencing [44]. He contended that the aggravating factors outweighed any mitigating features [45] and that the sentence "fell within a sound exercise of the sentencing discretion" [46].